

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jan 02, 2025**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

KEVIN DUDEN,

Plaintiff,

v.

STATE OF WASHINGTON;

WASHINGTON STATE

DEPARTMENT OF CORRECTIONS;

and WASHINGTON STATE

REFORMATORY,

Defendants.

No. 4:23-CV-05047-SAB

**ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

On December 16, 2024, the Court held a motion hearing in this matter via videoconference. Plaintiff was represented by Harold Franklin, Jr. Defendants were represented by Laura Morse.

At the hearing, the Court considered Defendants' Motion for Summary Judgment, ECF No. 14. After reviewing the briefs, caselaw, record, and hearing the arguments from both parties, the Court **granted** the Motion.

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**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT ~ 1**

## BACKGROUND

This case was filed in the Walla Walla Superior Court on January 12, 2023. Defendants timely removed the case to the U.S. District Court for the Eastern District of Washington on April 10, 2023, pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1441. Against all Defendants, Plaintiff brings claims for violations of Title VII under 42 U.S.C. § 2000e, and a violation of the Washington Law Against Discrimination (“WLAD”) under Wash. Rev. Code § 49.60.030.

On August 9, 2021, the Washington State governor passed Proclamation 21–14 requiring all employees of state agencies to obtain a COVID-19 vaccination or face termination, absent an approved religious or medical accommodation. The State Agency Vaccination Accommodation Guidelines confirmed that “safety measures in worksites that included PPE, distancing, testing, and other interventions were not stopping the spread of COVID-19.”<sup>1</sup>

Plaintiff worked as a Correction Specialist 3 in the re-entry division, maximum-security units at the Washington State Penitentiary in Walla Walla, Washington. His office had a door and window next to open-air cubicles for staff. Plaintiff’s job required he work with the Department of Corrections Aggression Replacement Training (“DOCAR”) program, which involved high security inmates in the West Complex and Intensive Management Unit. About 30 percent of his job involved teaching the inmates and managing staff on the program. The program utilized slide shows for the training, but the unit did not have internet access because inmates in the unit were not allowed to go online. His position description stated:

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<sup>1</sup> *Washington State Agency Vaccination Accommodation Guidelines*, Wash. Pub. Empls. Ass’n (issued August 27, 2021), [https://www.wpea.org/uploads/7/0/4/9/70496281/vaccination\\_accommodation\\_matrix\\_v1\\_final\\_8-27-21\\_\\_002\\_.pdf](https://www.wpea.org/uploads/7/0/4/9/70496281/vaccination_accommodation_matrix_v1_final_8-27-21__002_.pdf)

1 The Reentry Division is responsible for the Implementation of  
2 evidenced-based practices and the operational support to facilitate  
3 incarcerated Individuals' participation in and/or to provide evidence-  
4 based and research based interventions and promising  
5 practices/programs designed to decrease recidivism, while increasing  
6 the safety of staff, participants, incarcerated individuals and the public.

7 The Department of Corrections, in collaboration with its criminal  
8 justice partners, will contribute to staff and community safety and hold  
9 incarcerated individuals accountable by conducting appropriate  
10 screenings, assessments and evaluations to assess the risk and needs of  
11 the population and by providing services to address the risks and needs  
12 across the continuum in the least restrictive setting needed to ensure  
13 protection of staff, participant, incarcerated individuals and the public.  
14 Participants will be held accountable through the classification system  
15 and the administration of sanctions and reinforcers to effect change.

16 This position contributes to the Department's mission and vision by  
17 providing supervision, expertise and technical assistance to ensure  
18 delivery of Cognitive Behavioral Interventions in alignment with  
19 evidence-based practices; address participants risks, needs and  
20 behaviors; and support participant success In both prison and  
21 community based programming as well as re-entry.

22 On September 3, 2021, Plaintiff requested a religious exemption from the  
23 vaccine requirement, which Defendant Department of Corrections ("DOC")  
24 granted on September 21, 2021. However, in its letter granting the exemption,  
25 Defendant DOC informed Plaintiff that in his role and in light of the increased  
26 transmission of the COVID-19 virus at the time, his unvaccinated status posed "a  
27 significant risk of substantial harm" in the workplace. Defendant DOC determined  
28 the only reasonable accommodation was reassignment, which it encouraged  
29 Plaintiff to apply for with the understanding reassignment positions are limited to  
30 vacant, funded positions for which the employee is qualified. This could include a  
31 lateral position or position with a lower salary or job class. In the same letter,  
32 Defendant DOC also offered to meet with Plaintiff to discuss the decision.

33 On October 13, 2021, Plaintiff sent Defendant DOC an email demanding it

1 reconsider his request and accommodation. He requested Defendant DOC either  
2 allow him to continue working with masking and testing or place him on paid  
3 administrative leave until Defendant DOC could find a way to modify his duties to  
4 work from home until the pandemic subsided. He did not request a meeting with  
5 Defendant DOC staff.

6 On October 18, 2021, Defendant DOC terminated Plaintiff because it could  
7 not accommodate his religious exemption in his DOC role. Plaintiff alleges DOC  
8 failed to meaningfully engage in interactive discussions regarding job functions  
9 and potential accommodations in violation of Title VII and WLAD, and other  
10 employees were accommodated but he was not.

11 Plaintiff timely filed a charge of discrimination with the Equal Employment  
12 Opportunity Commission and received his right to sue letter on October 20, 2022.  
13 Plaintiff also filed a tort claim with Washington State on December 13, 2022, as  
14 required by Wash. Rev. Code § 4.92.100. His administrative remedies were  
15 exhausted.

16 In this matter, he seeks declaratory relief under Title VII; economic damages  
17 including for lost wages, benefits, retirement, and medical coverage; compensation  
18 for past and future non-pecuniary losses resulting from pain and suffering,  
19 emotional distress, inconvenience, mental anguish, loss of enjoyment, and  
20 humiliation; attorney's fees and costs; general and special damages; and pre-  
21 judgment interest.

## 22 MOTION STANDARD

23 Summary judgment is appropriate “if the movant shows that there is no  
24 genuine dispute as to any material fact and the movant is entitled to judgment as a  
25 matter of law.” Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless  
26 there is sufficient evidence favoring the non-moving party for a jury to return a  
27 verdict in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250  
28 (1986). The moving party has the initial burden of showing the absence of a

1 genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).  
2 If the moving party meets its initial burden, the non-moving party must go beyond  
3 the pleadings and “set forth specific facts showing that there is a genuine issue for  
4 trial.” *Anderson*, 477 U.S. at 248.

5 In addition to showing there are no questions of material fact, the moving  
6 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*  
7 *Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is entitled  
8 to judgment as a matter of law when the non-moving party fails to make a  
9 sufficient showing on an essential element of a claim on which the non-moving  
10 party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving party  
11 cannot rely on conclusory allegations alone to create an issue of material fact.  
12 *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

13 When considering a motion for summary judgment, a court may neither  
14 weigh the evidence nor assess credibility; instead, “the evidence of the non-movant  
15 is to be believed, and all justifiable inferences are to be drawn in his favor.”  
16 *Anderson*, 477 U.S. at 255.

## 17 DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

### 18 A. Legal Standard

19 Title VII, 42 U.S.C. § 2000e(j), requires accommodation for religious  
20 exemptions:

21 (j) The term “religion” includes all aspects of religious observance and  
22 practice, as well as belief, unless an employer demonstrates that he is  
23 unable to reasonably accommodate to an employee's or prospective  
24 employee's religious observance or practice without undue hardship on  
the conduct of the employer's business.

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26 Under Title VII, plaintiffs can seek recovery under theories of disparate  
27 treatment and failure to accommodate. 42 U.S.C. § 2000e. In this case, Plaintiff is  
28 pursuing a failure to accommodate claim.

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1 Under both Title VII and WLAD, the elements for a failure to accommodate  
2 claim are: “(1) [plaintiff] had a bona fide religious belief, the practice of which  
3 conflicts with an employment duty; (2) he informed his employer of the belief and  
4 conflict; and (3) the employer discharged, threatened, or otherwise subjected him  
5 to an adverse employment action because of his inability to fulfill the job  
6 requirement.” *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 606 (9th Cir. 2004);  
7 *see Kumar v. Gate Gourmet Inc.*, 180 Wash. 2d 481, 500–01 (2014). If the plaintiff  
8 establishes a prima facie case for failure to accommodate, then the burden shifts to  
9 the defendant to show they engaged in good faith efforts to reasonably  
10 accommodate but such accommodation would result in undue hardship. *See Tiano*  
11 *v. Dillard Dept. Stores, Inc.*, 139 F.3d 679, 681 (9th Cir. 1998).

12 The analysis for undue hardship is no longer more than a *de minimis* cost.  
13 *See Groff v. DeJoy*, 600 U.S. 447, 468 (2023). An employer must “reasonably  
14 accommodate an employee’s practice of religion, not merely [] assess the  
15 reasonableness of a particular possible accommodation or accommodations.” *Id.* at  
16 473. This is a fact-specific inquiry to determine if “the burden of granting an  
17 accommodation would result in substantial increased costs in relation to the  
18 conduct of its particular business.” *Id.* at 468, 470. The court must look to relevant  
19 factors like the nature, size, and operating cost of the employer when compared to  
20 the proposed accommodations. *Id.* at 470–71.

## 21 **B. Analysis**

22 Plaintiff established a prima facie case for failure to accommodate under  
23 Title VII and WLAD by satisfying the *Peterson* factors: (1) he asserted he had a  
24 bona fide religious belief that prohibited him from obtaining the COVID-19  
25 vaccine; (2) Defendant DOC granted his request for exemption from the State-wide  
26 vaccine requirement for government employees; (3) but Defendant DOC  
27 terminated Plaintiff because it could not accommodate his religious exemption. *See*  
28 *Peterson*, 358 F.3d at 606.

1           However, Defendant DOC satisfied its burden by proving it could not  
2 reasonably accommodate Plaintiff because, despite good faith efforts to  
3 accommodate him, Plaintiff did not engage in discussions with Defendant DOC,  
4 and Defendant DOC could not find a reasonable accommodation that did not result  
5 in undue hardship. *See Tiano*, 139 F.3d at 681.

6           At the time of Plaintiff's request, the State had determined the spread of  
7 COVID-19 was surging despite masking and testing protocols—accommodations  
8 Plaintiff requested. Plaintiff also requested to stay in his position while working  
9 remotely. However, Plaintiff's duties required in-person work because he managed  
10 a special inmate program in the maximum-security unit without access to internet  
11 for virtual coursework. He was in close proximity to inmates, increasing their risk  
12 of exposure to the virus. He also worked in an office by an open-air cubicle area,  
13 putting other staff at risk of infection. Further, Plaintiff's alternate request for paid  
14 administrative leave until the end of the pandemic was not reasonable. Paying for  
15 an employee indefinitely would have resulted in undue hardship for Defendant  
16 DOC because the burden of granting the accommodation would have resulted in  
17 substantial increased costs, including for hiring another employee qualified to work  
18 with high-risk inmates and paying both salaries during an already challenging  
19 economic period for the State. *See Groff*, 600 U.S. at 468. Finally, Defendant DOC  
20 offered to meet with Plaintiff, but Plaintiff did not exercise this option.

21           Defendant evaluated reasonable accommodations, and Plaintiff failed to  
22 engage in the interactive process. Defendant does not have to alter the functions of  
23 the job to satisfy an accommodation request under Title VII or WLAD. There are  
24 no issues of material fact in this matter, and the Court found Defendants are  
25 entitled to judgment as a matter of law.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendants' Motion for Summary Judgment, ECF No. 14, is  
3 **GRANTED.**

4 2. The District Court Clerk is directed to enter judgment in favor of  
5 Defendants and against Plaintiff.

6 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
7 this Order, provide copies to counsel, and **close** the file.

8 **DATED** this 2nd day of January 2025.



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14 Stanley A. Bastian  
15 Chief United States District Judge  
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